

### **REMARKS**

Claims 1-25 were pending in the application with claims 1 and 16 being the independent claims. Claims 1, 3, 10-12, 15, 16, 19-21 and 25 are amended and claims 2, 4, 5, 14, 17, 18 and 24 are canceled without prejudice or disclaimer of the subject matter therein. Reconsideration of presently pending claims 1, 3, 6-13, 15, 16, 19-23 and 25 is respectfully requested in light of the above amendments and the following remarks.

### **Drawings**

Correctly titled replacement drawing sheets are attached to this amendment.

### **Rejections under 35 U.S.C. § 112, second paragraph**

Claim 25 has been amended to depend from the method of claim 16. Accordingly, Applicant respectfully requests the Examiner withdraw this rejection.

### **Rejections under 35 U.S.C. § 101**

Claim 2 has been canceled and the substantive limitation of claim 2 has been incorporated into claim 1. It is respectfully asserted that claim 1, as currently amended, operates to produce a tangible result within the requirements of § 101. Accordingly, Applicant respectfully requests the Examiner withdraw this rejection.

### **Rejections under 35 U.S.C. § 102**

Claims 1, 2, 4, 6, 9-12, 15-21, 24 and 25 were rejected under 35 U.S.C. §102(b) as being anticipated by Nafeh et al. (U.S. 2002/0069155) hereinafter referred to as "Nafeh". Of these

claims, 2, 4, 17, 18 and 24 are canceled without prejudice or disclaimer of the subject matter therein.

As an initial matter, Applicant objects to the Office Action's anticipation rejection under §102(b) using Nafeh by alleging a genus. The Office Action states that Nafeh discloses "that a futures market can exist for anything, functioning as a market where bets can be placed on the course of the price or index that defines that market." (Office Action, page 4). Thus, the Office Action is applying a genus of "a futures market can exist for anything" to read on a species of a futures market for semiconductor manufacturing capacity.

As stated in the MPEP §2131.03, "[a]nticipation under §102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the rejection must be based on §103 which takes differences into account." (citing *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). It has also been held that "[a] prior art reference that discloses a genus still does not inherently disclose all species within that broad category . . . ." (MPEP §2112(IV.) citing *Metabolite Labs., Inc. v. Lab. Corp. of Am, Holdings*, 370 F.3d 1354, 1367, 71 USPQ2d 1081, 1091 (Fed. Cir. 2004)). Therefore, it is respectfully asserted that Applicant has been denied certain strategic arguments by the Office Action's erroneous application of §102.

However, to further prosecution, Applicant hereby responds to the Office Action's rejection under §102. As set forth at MPEP §2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." With respect to the claims as herein amended, this rejection is respectfully traversed.

Claim 1 requires:

a virtual semiconductor fabrication facility (virtual fab) which provides information regarding fabrication of semiconductor devices, the virtual fab comprising at least one communications interface with a semiconductor foundry and a plurality of manufacturing capacity

contracts; and  
a semiconductor futures exchange coupled to the virtual fab adapted to trade semiconductor manufacturing capacity futures based on the plurality of manufacturing capacity contracts.

*A Market Authority Is Not A Virtual Fab*

The Office Action incorrectly interprets the “Market Authority” of Nafeh as Applicant’s virtual fab. (Office Action, pp. 4 and 5). Nafeh teaches that a Market Authority acts “as a firm’s investment banker, and help[s] the firm design, market, and sell (IPO) its hedging instruments . . . or set up . . . future markets for (1) supply chain management or (2) risk-sharing management.” (Paragraph [0341]). It is also disclosed that the Market Authority “could charge firms an up-front consulting fee and set up for these services, plus an on-going ‘market management’ fee.” (Paragraph [0341]). This is not the same as a “virtual fab” which may have one or more components as shown in Fig. 3 of the present application, none of which could be considered an investment banker.

Thus, Nafeh teaches a Market Authority that helps design, market and sell futures contracts. Nafeh does not teach a “virtual fab comprising at least one communications interface with a semiconductor foundry and a plurality of manufacturing capacity contracts” as required by claim 1.

*Advance Purchase Orders Are Not Manufacturing Capacity Contracts*

The Office Action incorrectly interprets Nafeh’s “advance purchase orders” as Applicant’s capacity contracts. (Office Action, pp. 4 and 5). In addition, Nafeh teaches that “manufacturers and retailers like to solicit ‘advance purchase orders’” which can be “on any product, cash amount, or service” including “semi-commodity items semiconductor chips, copper wire, photocopy paper, solar energy, and cable TV time.” (Paragraphs [0343] and [0344]). These “Firm-Specific and Intra-Industry Contracts settle with the physical delivery of the underlying goods or services.” (Paragraph [0344]).

Thus, Nafeh teaches a futures market for deliverable products and services. It is respectfully asserted that the deliverable products and services taught by Nafeh do not disclose futures contracts that are directed to “semiconductor manufacturing capacity futures based on the plurality of manufacturing capacity contracts” as required by claim 1.

Therefore, since these required elements from claim 1 are absent, the rejection is not supported by the Nafeh reference and should be withdrawn.

Claim 16 requires:

- providing a semiconductor futures exchange;
- coupling the semiconductor futures exchange to a virtual fab, wherein the virtual fab comprises at least one communications interface with a semiconductor foundry and a plurality of manufacturing capacity contracts; and
- interacting with the semiconductor futures exchange through the virtual fab to trade semiconductor manufacturing capacity futures based on the plurality of manufacturing capacity contracts.

According to the Nafeh reference as cited above, Nafeh does not teach “coupling the semiconductor futures exchange to a virtual fab, wherein the virtual fab comprises at least one communications interface with a semiconductor foundry and a plurality of manufacturing capacity contracts.” Neither does Nafeh disclose “semiconductor manufacturing capacity futures based on the plurality of manufacturing capacity contracts.”

Therefore, since these required elements from claim 16 are absent, the rejection is not supported by the Nafeh reference and should be withdrawn.

Dependent claims 6, 9-12, 15, 16, 19-21 and 25, as previously presented or currently amended, depend from and further limit independent claims 1 and 16 and therefore are also deemed to be patentable over the cited art.

**Rejections under 35 U.S.C. § 103**

Claims 3, 5, 7, 8, 13, 14, 22 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nafeh in view of Hafen et al (U.S. Patent No. 6,748,287). Of these claims, 5 and 14 are canceled without prejudice or disclaimer of the subject matter therein. These rejections are respectfully traversed.

As stated above, Nafeh does not teach all of the limitations of independent claims 1 and 16, from which these claims further depend. Neither does the combination of Nafeh with Hagen cure this deficiency. Hagen was cited in the Office Action for its teaching with respect to a work-in-progress (WIP) tracking system for use in coordinating a semiconductor supply chain. (Office Action, page 8). The Office Action also asserts that “the foundry acts as Applicant’s virtual fab.” (Office Action, page 8). However, Hagen does not teach “the virtual fab comprises at least one communications interface with a semiconductor foundry and a plurality of manufacturing capacity contracts” as required by independent claims 1 and 16. Therefore, it is respectfully requested that this rejection be withdrawn.

**Conclusion**

An early formal notice of allowance of claims 1, 3, 6-13, 15, 16, 19-23 and 25 is requested. The Examiner is invited to telephone the undersigned if further assistance is necessary. Deposit account number 08-1394 can be used for any over payments or under payments.

Respectfully submitted,



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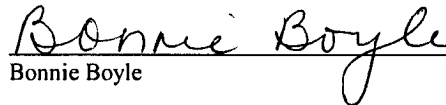
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